

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION
Consolidated Civil Action

RALEIGH WAKE CITIZENS ASSOCIATION,)
et al.)

Plaintiffs,)

v.)

WAKE COUNTY BOARD OF ELECTIONS,)

Defendant.)

No. 5:15-cv-156

CALLA WRIGHT, et al.)

Plaintiffs,)

vs.)

STATE OF NORTH CAROLINA, et al.)

Defendant.)

No. 5:13-cv-607

DECLARATION OF GARY SIMS

NOW COMES Gary Sims, who under penalty of perjury states as follows:

1. I am over 18 years of age, legally competent to give this declaration, and have personal knowledge of the facts set forth in it.

2. I am the Director of Elections for Wake County, North Carolina, a position I have held since July 2015. In my role as Director, it is my responsibility to ensure that Wake County elections are orderly, fair, and open; that elections comply with all requirements set forth in the North Carolina General Statutes, or by the North Carolina State Board of Elections ("SBOE"); and that elections are conducted in a manner that will preserve the integrity of the democratic process.

Before I was appointed Director, I served for eight years as Deputy Director of Elections for Wake County. I have worked in elections since 1999.

3. The Board is responsible for conducting all elections held in Wake County. These responsibilities, largely dictated by North Carolina statutes, include facilitating local elections; establishing election precincts and voting sites; appointing and training precinct officials; preparing and distributing ballots and voting equipment; canvassing and certifying the ballots cast in elections; investigating any voting irregularities; maintaining voter registration and participation records; and providing election information to members of the public.

4. As Director of the Wake County Board of Elections, I am familiar with the procedures for elections in this County.

OVERVIEW OF STATUTORY REQUIREMENTS FOR THE GENERAL ELECTION

5. In administering any general election, special election, or primary election, Wake County is bound by the timelines set forth in the North Carolina General Statutes, as administered by the SBOE.

6. The General Election will be on **November 8, 2016**. The deadlines listed below all have been calculated in reference to that date. Attached for the Court's reference as **Exhibit A** is a chart detailing the applicable statutory deadlines in relation to the November 8 General Election.

7. I have referenced the relevant sections of the General Statutes that I believe to be applicable. Ultimately, the WBOE follows the guidance and instructions of the SBOE with respect to the implementation of the election process, including applicable deadlines. I understand that the SBOE has authority to modify election deadlines in certain circumstances. To date, I am not aware that the SBOE has exercised any such authority with respect to any of the deadlines discussed below.

8. The candidate filing period for the Wake County Board of Education, which is neither a primary-based election nor a municipal election, historically has been dictated by session law. According to Session Law 2013-110, the candidate filing period begins at 12:00 noon on the second Monday in June, and ends at 12:00 noon on the first Friday in July. For 2016, these dates fell on **June 13 and July 1**.

9. Pursuant to N.C. Gen. Stat. § 163-122, a qualified voter who seeks to have his name printed on a general election ballot as an unaffiliated candidate for a county office must file written petitions with the Board on or before the last Friday in June. For 2016, this deadline fell on **Friday, June 24**.

10. Pursuant to N.C. Gen. Stat. § 163-258.16, not later than 100 days before a regularly scheduled election, and as soon as practicable in the case of an election not regularly scheduled, the Board must prepare an election notice to be used in conjunction with the federal write-in absentee ballot under the Uniformed and Overseas Citizens Absentee Voting Act. The notice must contain a list of all the ballot measures and federal, state, and local offices that, as of that date, are expected to be on the election ballot. In reference to the regularly scheduled election on November 8, 2016, this deadline falls on **July 31, 2016**.

11. Pursuant to N.C. Gen. Stat. § 163-123, a candidate seeking to have write-in votes counted towards electing him to a county office—and therefore, to have a space for a write-in vote printed on the ballot—must file written petitions with the county board of elections on or before the 90th day before the General Election. This deadline falls on Wednesday, **August 10, 2016**. This is the final deadline for content to be included on a ballot. All subsequent deadlines address voter information and access.

12. Pursuant to N.C. Gen. Stat. §§ 163-227.3 and 163-258.9, absentee ballots must be made available to all covered voters, i.e., all voters who submit a valid military-overseas ballot application or are otherwise qualified to vote by absentee ballot, no later than 60 days prior to a statewide general election in even-numbered years, unless the SBOE authorizes a shorter period under N.C. Gen. Stat. § 163-22(k) that is consistent with federal law. For the statewide general election occurring on November 8, 2016, this deadline falls on **September 9, 2016**.

13. Pursuant to N.C. Gen. Stat. § 163-128, the Board must publish notice of any changes of voting precincts and/or voting places no later than 45 days prior to the next primary or general election. For purposes of the November elections, this date falls on **September 24, 2016**.

14. Pursuant to N.C. Gen. Stat. § 163-227.2, early voting takes place between the second Thursday before an election and the last Saturday before that election. For the 2016 general election, this time period runs from **October 27, 2016**, until **November 5, 2016**.

15. Voters must be registered no later than 25 days prior to any election or primary. For the November 2016 elections, this deadline falls on **October 14, 2016**. N.C. Gen. Stat. § 163-82.6.

OVERVIEW OF STATUTORY REQUIREMENTS FOR ANY PRIMARY ELECTION

16. A primary election is subject to many of the same requirements detailed above. The Board must prepare an election notice not less than 100 days before any primary, or as soon as practicable if the election is not regularly scheduled. N.C. Gen. Stat. § 163-258.16. The notice of candidate filing period, and the candidate filing period itself, are dictated in part by the SBOE and in part by N.C. Gen. Stat. § 163-106(f). To my knowledge, the SBOE has not recently implemented a filing period that lasted less than five business days.

17. Pursuant to N.C. Gen. Stat. § 163-287, any election must be noticed 45 days before the election date. Additionally, as with any general election, the Board must publish notice of any changes of voting precincts and/or voting places no later than 45 days prior to the next primary. N.C. Gen. Stat. § 163-128.

18. A candidate seeking a party primary nomination for any county office, including the Wake County Board of County Commissioners, must file a notice of candidacy in accordance with applicable law or instruction from the SBOE.¹ For 2016, the North Carolina General Assembly established a candidate filing period that concluded on December 21, 2015.

19. In accordance with N.C. Gen. Stat. § 163-227.2, early voting for a primary takes place between the second Thursday before an election and the last Saturday before that election.

20. Pursuant to N.C. Gen. Stat. § 163-227.3, absentee ballots must be made available to all covered voters no later than 50 days before any primary, or 45 days if authorized by the SBOE.

21. After any primary or special election is held, the Board must complete the canvass of the votes cast and authenticate the count in every ballot item, culminating in the authentication of the official election results seven days after the election. N.C. Gen. Stat. § 163-182.5. Thus, for example, for ballot information to be completed in accordance with the statutory requirements listed above, it is important that any primary election take place no later than seven days prior to the current August 10, 2016 deadline.

¹ The SBOE has the authority under N.C. Gen. Stat. § 163-22.2 to make reasonable rules and regulation with regard to any primary or election. N.C. Gen. Stat. §§ 163-22; 163-22.2.

OVERVIEW OF WAKE COUNTY BOARD OF ELECTIONS PROCEDURES

22. Approximately ten percent of the state's registered voters reside in Wake County. To comply with the above-referenced statutory requirements and to adequately serve the large number of voters residing in Wake County, the Board begins to prepare for the election process several months before Election Day.

23. At the beginning of this process, the Board must code any applicable Wake County districts to identify the addresses that are part of the individual districts. The time required to code the districts depends on a variety of factors, such as whether the Board receives a "shape file" of the districts and the extent and nature of the changes required to be made to implement new districts. For example, if the Board does not receive a "shape file," which is a visual representation of the districts on a map, the Board will coordinate with the county Geological Information System department to generate such a file before coding the new districts.

Polling Places

24. As the election approaches, the Board takes steps to adequately staff all identified polling places. To competently serve Wake County voters, the Board must recruit and train approximately 650 workers to serve at polling places during the early voting period. The Board must recruit and train approximately 2,600 workers to serve at polling places on Election Day. It takes several sessions and significant resources to train these workers, making it very logistically difficult to simultaneously train both groups.

25. Due to the amount of space required, the Board—like many other bodies charged with administering elections—typically works with facilities such as schools and churches to identify and schedule polling places. To accommodate school, child care, and/or church schedules, these polling places are identified and booked several months in advance. Under state law, the

polling places must be finalized and formally noticed no later than 45 days prior to the election.
N.C. Gen. Stat. § 163-128(a).

Creating and Printing Ballots

26. Because of the importance of accuracy on the ballot and the need to avoid any processing complications, both the Board and the SBOE conduct an extensive editing and testing process to ensure complete accuracy of the ballots to be used in any election.

27. Immediately after the deadline to petition for write-in space on a ballot, which is 90 days before the election (this year, **August 10, 2016**), the SBOE begins to proofread all ballot content for non-local races. At the same time, the Board begins to craft the template for the Wake County ballot. The Board then inserts the information from the SBOE on the non-local races into its template before conducting an extensive proofreading and testing process to ensure accuracy.

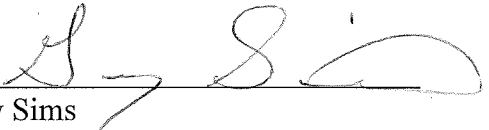
28. The Board then submits the completed Wake County template—which by then holds information for all local, state, and federal positions that voters will elect in the upcoming election—for approval from the SBOE. The SBOE is responsible for reviewing the ballot templates of all 100 counties, and does so on a “first come, first serve” basis.

29. To print the ballots, the Board submits a template to an outside vendor listing the candidates for all elections that will be held on that date, including local, state, and national elections. After the vendor returns the printed ballots to the Board, the Board must then test those ballots to ensure that there will be no problems with the ballots being processed by the vote-counting software.

30. The Board generally utilizes the entire period of time between the deadline to petition for a write-in space and the deadline for the submission of absentee ballots to conduct this process.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct to the best of my knowledge.

Executed this 18th day of July, 2016.



Gary Sims
Director
Wake County Board of Elections